

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

DANNY'S SUB SHOP
Respondent

Case No.: I-00-70264

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701 *et seq.*) and Title 23, Chapter 30 of the District of Columbia Municipal Regulations ("DCMR"). By Notice of Infraction (No. 00-70264) served January 9, 2001, the Government charged Respondent Danny's Sub Shop with a violation of 23 DCMR 3012.1 for allegedly failing to take all necessary precautions to keep its premises free from rats and vermin.¹ The Notice of Infraction charges that the alleged violation occurred on December 27, 2000 at 3710 Minnesota Avenue, N.E., and seeks a fine of \$1,000.00.

¹ 23 DCMR 3012.1 provides: "All persons engaged in the operation of any restaurant, delicatessen, or catering business shall be required to take all necessary precautions to keep the premises free from rats and vermin."

On February 2, 2001, this administrative court received Respondent's plea of Admit with Explanation along with a request for a reduction or suspension of the fine. *See* D.C. Code § 6-2712(a)(2). In its explanation, Respondent asserted that it is now under contract with J.C. Ehrlich Pest Control services for bi-weekly service until the pest control problem is abated. Respondent attached to its explanation a copy of a pest control service order dated December 28, 2000 issued by J.C. Ehrlich Co., Inc. referencing pest control treatment for roaches and rodents at Respondent's business.

On February 14, 2001, this administrative court issued an order permitting the Government to respond to Respondent's plea and request. No response was received by the Government. However, on February 21, 2001, Respondent filed a paper styled "Reply" stating that "[w]e have done as much as we can to prevent the problem" and, again, requesting a reduction or suspension of the penalty. The Government did not respond to Respondent's Reply. Accordingly, this matter is now ripe for adjudication.

II. Findings of Fact

1. By its plea of Admit with Explanation, Respondent admits violating 23 DCMR 3012.1 on December 27, 2000.
2. On December 27, 2000, Respondent failed to take all necessary precautions to keep the premises free from rats and vermin.
3. On December 28, 2000, Respondent contracted with J.C. Ehrlich Co., Inc. for bi-weekly pest control services.

4. Respondent has acknowledged responsibility for its unlawful conduct, and has taken immediate steps to attempt to comply with the requirements of 23 DCMR 3012.1.
5. There is no evidence in the record indicating Respondent has a history of non-compliance.

III. Conclusions of Law

1. On December 27, 2000, Respondent violated 23 DCMR 3012.1. Accordingly, Respondent is liable for a fine in the amount of \$1,000.00. 16 DCMR 3216.1(i).
2. Respondent seeks a reduction or suspension of the fine. This administrative court recognizes Respondent's immediate efforts to attempt to come into compliance with the requirements of 23 DCMR 3012.1 after the Notice of Infraction was issued. While such post-infraction remediation is far less noteworthy than already having had in place a preventive system of pest control, the lack of evidence in the record as to past compliance problems on the part of Respondent suggests that the effort was made in good faith. In addition, Respondent has acknowledged responsibility for its unlawful conduct. *See* D.C. Code §§ 6-2703(b), 6-2712(a)(2); U.S.S.G. § 3E1.1.
3. This administrative court concludes that a reduction, although not a suspension, of the fine is warranted in this case. Accordingly, the authorized fine of \$1,000.00 shall be reduced to \$500.00.

IV. Order

Therefore, upon the entire record in this case, it is hereby this _____ day of _____, 2001:

ORDERED, that Respondent shall pay a total of **FIVE HUNDRED DOLLARS (\$500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **6-21-01**

Mark D. Poindexter
Administrative Judge